

Exhibit 38

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

LEHMAN BROTHERS HOLDINGS INC.,
et al.,

Debtors.

Chapter 11

CASE NO.: 08-13555 (JMP)
(Jointly Administered)

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767 Fifth Avenue
New York, New York
June 25, 2013
9:29 a.m.

VIDEOTAPED DEPOSITION of RICHARD
KRASNOW, before Melissa Gilmore, a Notary
Public of the State of New York.

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434
REF: 104143

1 KRASNOW

2 MR. ISAKOFF: I don't believe that's
3 true with respect to ten.

4 Q. I beg your pardon. My error.

5 Mr. Isakoff is correct. Let me see if I can --
6 let me see if I can get this right.

7 Do you recall that you were
8 designated by LBHI to testify with respect to
9 topics one, two, four, five, six, seven, eight
10 and nine?

11 **A. Yes.**

12 Q. And are you prepared to do that
13 today?

14 **A. Yes.**

15 Q. Now, if I can ask you with respect
16 to topic one, "The lease agreement dated
17 March 16, 2005," et cetera.

18 Do you see that sir?

19 **A. Yes, sir.**

20 Q. Do you have any -- strike that.

21 Let me ask you first this question:
22 In preparing for your deposition here today,
23 did you review any or all of the drafts of that
24 lease?

25 **A. No.**

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2 Q. You reviewed none of them?

3 **A.** **I did not review any drafts.**

4 Q. Did you review any communications
5 from the negotiations?

6 **A.** **I don't recall that I reviewed any.**

7 Q. All right. Do you have any
8 knowledge, firsthand or otherwise, with respect
9 to any of the negotiations of the March 16,
10 2005 lease pertaining to 25 Bank Street?

11 **A.** **No.**

12 Q. Do you have any knowledge of any
13 kind concerning the intent of any of the
14 parties to that lease as of the time it was
15 executed?

16 **A.** **No.**

17 Q. Now, with respect to item two,
18 Schedule 4 to the lease, do you have any
19 knowledge concerning the negotiations of what
20 became Schedule 4 to the same lease?

21 **A.** **No.**

22 Q. Have you spoken to any of the
23 negotiators from any one of the three parties
24 to that lease about any of the negotiations
25 that led up to the execution of the lease,

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2 including Schedule 4?

3 **A. No.**

4 Q. Do you have any knowledge, firsthand
5 or otherwise, concerning the intent of the
6 parties as of the time that Schedule 4 was
7 agreed to?

8 **A. No.**

9 Q. Am I correct, Mr. Krasnow, that in
10 preparing for your deposition today, you did
11 review certain documents?

12 **A. Yes.**

13 Q. Can you tell me what the documents
14 were?

15 **A. There were, what I would view as,**
16 **significant number of pieces of paper that**
17 **consisted of a lot of different types of**
18 **documents, e-mails, memos, agreements, drafts.**
19 **A variety, a panoply of documents.**

20 Q. And when did you review those
21 documents?

22 **A. In connection with the preparation**
23 **for this deposition?**

24 Q. Yes, sir.

25 **A. Yesterday and a month or so ago.**

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2 Q. All right. Did any of those
3 documents refresh your recollection concerning
4 any of the events in 2010 or 2011 pertaining to
5 the lease or Canary Wharf's claim?

6 A. **Yes.**

7 Q. Which ones?

8 A. **I don't understand when you say
9 which ones.**

10 Q. Which of the documents, as best as
11 you recall it, refreshed your recollection?

12 A. **There were e-mails that related to
13 the period in question, in question being
14 settlement negotiations leading up to events in
15 December of 2010 and slightly thereafter.
16 There were drafts -- there were draft
17 stipulations. There were lease documents and
18 attendance schedules. I think that probably
19 covers it.**

20 Q. Okay. Thank you.

21 Do you recall, Mr. Krasnow, in
22 connection with your looking at documents for
23 preparation for this deposition, whether it was
24 yesterday or roughly a month ago, do you recall
25 looking at any documents that predated

1 KRASNOW

2 March 16, 2005?

3 **A. No.**

4 Q. Do you have any information of any
5 kind concerning the negotiations of the lease
6 at 25 Bank Street that's referred to in
7 paragraph one of Schedule A of Exhibit 59?

8 MR. ISAKOFF: Object to form.

9 **A. I'm sorry, could that question be
10 read back?**

11 MR. TULCHIN: Could you read it
12 please, Melissa?

13 (Record read.)

14 **A. It's my understanding that whatever
15 documents, if any, that there are would have
16 been provided, and I'm not -- I'm just not
17 aware -- as I said, I don't recall seeing
18 anything myself that relates to the
19 pre-March 16, 2005 period.**

20 Q. Okay. Have you had any
21 communications with anyone who you believe was
22 involved in any way with the negotiations of
23 that lease over the last two years?

24 **A. No.**

25 Q. And is the same true with respect to

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2 Schedule 4 to the lease?

3 **A. Yes, it is true.**

4 Q. All right. Now, in preparing for
5 this deposition, Mr. Krasnow, did you have
6 occasion to consult with Mr. Ehrmann?

7 **A. In connection with the preparation
8 for this deposition?**

9 Q. Yes, sir.

10 **A. No.**

11 Q. Have you read the transcripts of any
12 of the depositions that have been taken so far?

13 **A. No.**

14 Q. All right. Have you been told about
15 the testimony of any of the deposition
16 witnesses thus far?

17 MR. ISAKOFF: Now, I'm going to
18 instruct you not to answer to the extent
19 that whatever you have been told has been
20 told to you by counsel.

21 If you have been told the content of
22 the depositions by anybody other than
23 counsel, then you should respond, but you
24 should leave any discussions with counsel
25 out.

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2 look at it?

3 A. I did go to offices at Canary Wharf.
4 I don't know whether or not the offices, which
5 were Lehman offices that I visited, were these
6 offices -- these being the premises covered by
7 the lease at issue here.

8 Q. Did you know in 2010 that 25 Bank
9 Street had more than a million square feet of
10 office space?

11 A. I may have. I don't...

12 Q. Were you aware that 25 Bank Street
13 was built for Lehman originally?

14 MR. ISAKOFF: Object to form.

15 A. I don't recall if I knew that then.

16 Q. Were you aware that the 2005 lease
17 provided that Lehman Brothers Limited would be
18 a tenant as a convenience for the Lehman global
19 entity?

20 MR. ISAKOFF: Object to form.

21 A. No.

22 Q. Do you know who on the Canary Wharf
23 side was involved in the negotiations of the
24 lease?

25 A. No.

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Q. And how about Schedule 4 of the
lease?

4

A. **I don't know.**

5

Q. Were you aware that 25 Bank Street
was one of the buildings that was put into a
securitization of Canary Wharf properties?

8

MR. ISAKOFF: What is the time frame
of when you are asking was he aware? What
is the time frame? I'm lost now.

11

Q. Let me ask you about in 2010, were
you aware of that?

13

MR. ISAKOFF: Thank you.

14

A. **I don't recall.**

15

Q. In 2010, as best you remember it,
did you have readily available to you, in your
office at Weil Gotshal, a copy of the lease?

18

MR. ISAKOFF: Object to form.

19

A. **I'm sorry, what year? 2010?**

20

Q. Yes, sir.

21

A. **We had a copy of the lease.**

22

Q. Did you, yourself, have one in your
office on a computer or in hard copy?

24

A. **Yes.**

25

Q. Which? Or is it one or the other or

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2 Q. Did LBHI, in the fall of 2010, have
3 any need at all for a million square feet or
4 anything close to that of office space in
5 London, England?

6 A. **I'm not in a position to answer the**
7 **question.**

8 Q. You don't have any information that
9 would bear on that question; is that right?

10 A. **That's correct.**

11 Q. Leaving aside Canary Wharf or the
12 building located at 25 Bank Street, are you
13 aware of any effort ever made by LBHI to enter
14 into a lease for office space in London?

15 MR. ISAKOFF: And the time frame for
16 this is?

17 MR. TULCHIN: September 15, 2008
18 until today.

19 MR. ISAKOFF: Okay.

20 A. **Bear with me. I'm trying to think**
21 **back to that period of time.**

22 **I don't know. There were employees**
23 **of LBHI in London, but I have no knowledge.**

24 Q. Do you have any knowledge of any
25 lease that LBHI has ever entered into for

1 KRASNOW

2 office space in London in the same period,
3 September 15, '08 to today?

4 **A. No. No, I have no knowledge.**

5 MR. ISAKOFF: Make sure he has
6 finished his question first.

7 THE WITNESS: Oh, I'm sorry. I
8 thought he had.

9 Q. As of today, do you know whether or
10 not LBHI rents any office space anywhere in
11 England?

12 **A. No, I don't know.**

13 Q. Do you know whether LBHI rents any
14 office space anywhere in the United Kingdom?

15 **A. No, I don't know.**

16 Q. How about in Europe?

17 **A. I don't know.**

18 Q. To the best of your knowledge, since
19 September 15, 2008, has LBHI entered into any
20 negotiations to rent any office space in the
21 United Kingdom?

22 **A. I don't know.**

23 Q. In the fall of 2010, did you ever
24 gain any understanding from any source that
25 LBHI was interested in renting all or a portion

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2 of the office space at 25 Bank Street?

3 **A. I'm sorry. Could that question be**
4 **repeated for me?**

5 MR. TULCHIN: Could you read it back
6 please, Melissa?

7 (Record read.)

8 **A. I did not have any understanding.**

9 Q. I couldn't quite hear you.

10 **A. I didn't have any understanding.**

11 Q. Mr. Krasnow, at any time in the fall
12 of 2010, did you tell Jennifer DeMarco of
13 Clifford Chance, in writing or verbally, that
14 LBHI might want or would want to rent space at
15 25 Bank Street?

16 **A. I don't recall any such**
17 **communication.**

18 Q. Did you ever tell anyone else at
19 Clifford Chance?

20 **A. No.**

21 Q. Did you ever tell anyone at Sullivan
22 & Cromwell that, same time period?

23 **A. No.**

24 Q. Did you ever tell any representative
25 of Canary Wharf whether it be a lawyer, an

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2 employee, an officer, an owner, any
3 representative of Canary Wharf in the fall of
4 2010, that LBHI might want to take space at 25
5 Bank Street?

6 **A. No.**

7 MR. TULCHIN: Could we please mark,
8 as Krasnow Exhibit 69, a document, the
9 first page of which is dated December 1,
10 2010 -- oh -- yes, that's right. I'm
11 sorry. Production numbers LBHI_CW6467
12 through 6472.

13 (Krasnow Exhibit 69, Document,
14 Production Numbers LBHI_CW6467 through
15 6472, marked for identification.)

16 **A. (Perusing.)**

17 Q. Take as much time as you want to
18 look at the document, Mr. Krasnow. I want to
19 ask you first about an e-mail that appears on
20 the fourth page. It's a page with production
21 number 6470 from Jennifer DeMarco, November 30,
22 2010, to you with a copy to Erika del Nido.

23 Do you see that, sir?

24 **A. Yes, I do.**

25 Q. Did you receive that e-mail on or

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for itself.

Q. Looking at it now, in 2013, is there anything in the words that are present that you would interpret or understand to be on the subject of whether or not LBHI wanted a new lease?

A. The only response to that is we did not believe that a condition of getting the documents we require should be a response to that question.

Q. Did you have a meeting with lawyers from Sullivan & Cromwell on or about December 6, 2010?

A. Yes.

Q. Did you take any notes at that meeting?

A. I don't believe I did.

Q. Do you recall who else was present at the meeting?

A. Besides myself?

Q. Yes, sir.

A. Mr. Dietderich was there from Sullivan & Cromwell. There may have been another attorney from Sullivan who attended.

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There was somebody from Canary Wharf, or the
parent of Canary Wharf, but someone who was
there represented themselves as being there on
behalf of Canary Wharf. I don't recall their
name. And Erika del Nido.

7

Q. To your knowledge, did Ms. del Nido
take any notes of what was said at that
meeting?

10

A. I don't recall.

11

Q. In preparing for your deposition
here today, both your deposition as a 30(b) (6)
witness and your personal deposition, did you
come across any notes that were taken of the
December 6 meeting?

16

A. No, I don't recall seeing any.

17

Q. Where was the meeting held?

18

A. At our offices.

19

Q. Was it on the 25th floor here at --

20

A. Yes.

21

Q. -- the General Motors Building?

22

MR. ISAKOFF: Wait until he is

23

finished.

24

A. Yes.

25

Q. Sorry, you may have thought I was

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2 finished.

3 Do you remember how long the meeting
4 took?

5 A. No.

6 Q. What's your best recollection of
7 what was said to you at that meeting and what
8 you said?

9 A. I believe I tried to understand why
10 we were meeting with Sullivan & Cromwell, and
11 I'm not sure whether that conversation occurred
12 at that meeting or prior to that meeting
13 perhaps with Mr. Dietderich. It's kind of both
14 gelled somewhat in my mind.

15 The meeting clearly was in response
16 to our request to find out what was going on
17 with respect to JPM. I seem to remember
18 Mr. Dietderich indicating that JPM was very
19 concerned about there being any disclosure as
20 to their actually being involved in a
21 transaction, that it was them, notwithstanding
22 the articles in the press.

23 I remember that there was a
24 discussion about the need for a confidentiality
25 agreement before we would be provided with a

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2 copy of the lease.

3 I certainly remember discussing with
4 them the importance of our finding out about
5 the transaction, and it's my recollection that
6 Mr. Dietderich indicated a desire that they
7 know whether or not we would take the lease in
8 the context of JPM doing the transaction with
9 Canary Wharf, and that somehow after that
10 occurred we would have the ability and exercise
11 that ability to then try to take the lease.

12 Something that didn't quite make a
13 lot of sense to me, but that was the context,
14 as I recall, that Mr. Dietderich explained why
15 they wanted to know if we would be interested
16 in the leasehold premises, assuming we had the
17 ability to do that.

18 I don't recall exactly how the
19 meeting ended, other than I guess there was
20 discussion about the confidentiality agreement.

21 Q. Anything else you recall?

22 A. My reaction was that they were very
23 anxious to proceed with the JPM transaction.
24 There may have been some discussion, I don't
25 recall specifically, with respect to our

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**understanding about what was happening with
the -- with whatever agreement there was with
the administrators of LBL.**

5

Q. When Mr. Dietderich asked you to tell him whether LBHI was interested in the premises, what, if anything, did you say in response?

9

A. I don't recall my precise words.

10

Q. Well, do you recall the substance of what you said?

12

A. No.

13

Q. During the same meeting, on December 6, here in your offices at Weil Gotshal, did Mr. Dietrich tell you what the economics of the contemplated transaction with JPMorgan were going to be?

18

A. He, as I recall, did generally describe what he represented were certain of the economic terms. That's correct.

21

Q. So he told you what JPMorgan was going to pay to get this 999-year lease; is that right?

24

A. I believe he told us that aspect of the proposed transaction, yes.

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Q. Okay. Later on or after
December 20, 2010 --

4

A. December 20?

5

Q. Let me back up. I don't want to
mislead you here.

7

I'm asking you now about the actual
transaction, which was signed, I believe, on
December 20, 2010. And my question is this:

10

At the point when you were able to
examine the final lease that was executed, did
the economics that appear in that document,
line up with what Mr. Dietderich had said to
you on December 6?

15

MR. ISAKOFF: Object to form.

16

**A. You mean when we were provided with
a complete copy of the lease?**

18

Q. Whenever you first saw the economic
terms in the final executed contract, did they
line up with what Mr. Dietderich had explained
about the economics during the meeting on
December 6?

23

**A. When -- certain of the economic
terms did.**

25

Q. Are you saying -- I'm sorry.

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2 **A. There are certain material terms**
3 **that did not. Those economic terms that**
4 **Mr. Dietderich described were consistent with**
5 **those provisions of the lease that refer to**
6 **those economic terms.**

7 Q. Okay. Were there other provisions
8 that were undescribed that later on you thought
9 were material?

10 **A. Yes.**

11 Q. What were they?

12 A. **There was a provision in the lease**
13 **that had not previously been disclosed, either**
14 **by Mr. Dietderich when he was describing the**
15 **lease, nor in -- I believe we got a draft of**
16 **the lease before it was finalized and then**
17 **thereafter, in response to my request after a**
18 **closing, we got a redacted form of the final**
19 **lease.**

20 In neither of those versions was
21 there the provision that was reflected in a
22 fully disclosed -- I believe fully disclosed
23 lease a long time later, which provision
24 precluded Canary Wharf from putting the lease,
25 if you will, giving a notice of a put, if I can

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characterize it that way, to LBHI.

3

Q. Anything else that you thought later had been omitted from what Mr. Dietderich described?

6

A. **That's what immediately comes to my mind.**

8

Q. Okay. Is there anything else that comes to mind, you know, quasi immediately as you are sitting here today? I just want to make sure that you're not saying there is something else, but it's not quite as immediate in your thinking.

14

A. **No. If I were to look at the lease, there might be something else, but that is the one provision that immediately comes to my mind.**

18

Q. Okay.

19

MR. TULCHIN: Melissa, could we mark, please, as Krasnow Exhibit 71, a document, the first date of which is December 6, 2010, production numbers LBHI_CW10941 through 10944.

24

(Krasnow Exhibit 71, Document, Production Numbers LBHI_CW10941 through

25

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what that first sentence says.

Q. Okay. Looking at the second sentence, Mr. Dietderich's e-mail says, "You objected to that on the basis that economics of lease might demonstrate a surprisingly high market value that LBHI could capture."

Is that accurate, that you said words to that effect in the meeting?

A. I don't recall that I used those words.

Q. Regardless of whether you used those exact words, did you communicate that sentiment?

A. I don't know if I communicated that sentiment.

Q. Did you say in the meeting that the economics of the JPMorgan lease might demonstrate a high market value and that you wanted to see what the value was?

A. I'm going to phrase this in a maybe little bizarre way, but it's likely I did say something to that effect.

Q. And then Mr. Dietderich's next sentence says, "We disclosed to you the market